

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MORGAN A. TYSON,

Petitioner,

vs.

ROBERT L. AYERS, Warden,

Respondent.

No. C 07-05784 JF (PR)

ORDER DENYING CERTIFICATE OF
APPEALABILITY

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the California Board of Prison Terms' decision denying parole. On August 31, 2009, the Court denied the instant petition on the merits and entered judgment in favor of Respondent. Petitioner filed a notice of appeal and the matter was forwarded to the United States Court of Appeals for the Ninth Circuit.

On March 22, 2011, the Ninth Circuit remanded this case for the limited purpose of granting or denying a certificate of appealability. See Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010) (en banc) (overruling those portions of White v. Lambert, 370 F.3d 1002, 1004 (9th Cir. 2004), and Rosas v. Nielsen, 428 F.3d 1229, 1231-32 (9th Cir. 2005) (per curiam), that relieved a prisoner from obtaining a certificate of appealability to review the denial of a habeas petition challenging an administrative decision denying

1 parole).

2 “Where a district court has rejected the constitutional claims on the merits, the
3 showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate
4 that reasonable jurists would find the district court’s assessment of the constitutional
5 claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Court
6 denied the instant habeas petition after careful consideration of the merits. The Court
7 found no violation of Petitioner’s federal constitutional rights in the administrative
8 decision denying parole. Petitioner has failed to demonstrate that jurists of reason would
9 find it debatable whether this Court was correct in its ruling. Accordingly, a certificate of
10 appealability is DENIED.

11 The clerk shall close the case and forward this order to the Ninth Circuit from
12 which Petitioner may also seek a certificate of appealability. See United States v. Asrar,
13 116 F.3d 1268, 1270 (9th Cir. 1997).

14 IT IS SO ORDERED.

15 DATED: 3/28/11


16 JEREMY FOGEL
17 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MORGAN A TYSON,
Petitioner,

Case Number: CV07-05784 JF

CERTIFICATE OF SERVICE

v.

ROBERT L AYERS, Warden,
Respondent.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/4/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Morgan A. Tyson C-81713
CA State Prison-Solano
P.O. Box 4000
18-129L
Vacaville, CA 95696

Dated: 4/4/11

Richard W. Wieking, Clerk